

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO.: 22-20104-CR-MARTINEZ

v.

GERMAN A. RIVERA,

Defendant.

\_\_\_\_\_/

DEFENDANT, GERMAN A. RIVERA'S OBJECTIONS TO  
PRESENTENCE INVESTIGATION REPORT AND REQUEST FOR DESIGNATION

COMES NOW the Defendant, GERMAN A. RIVERA, by and through undersigned counsel and files this his Objections to the Presentence Investigation Report ("PSR") as follows:

OBJECTIONS

The Defendant, GERMAN A. RIVERA, has no objections to the factual matters but objects to Paragraph 97 of the Presentence Investigation Report which increases the Offense Level 3 pursuant to § 3A1.2(a). The defense argues that this provision does not apply to the instant case. However, the defense acknowledges that irrespective of this enhancement, the Defendant still scores in the same Guideline range.

VARIANCE/DOWNWARD DEPARTURE

The Defendant requests that this Court grant a variance/downward departure in this matter. The Defendant would argue that the total Offense Level over-represents the Defendant's actions in this case. In *Rita v. United States*, 551 U.S. 338, 127 S.Ct.2456, 168 L.Ed.2d.203 (2007) the Supreme Court noted that "the sentencing court does not

enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” at 2465. The Court further noted that a district court may sentence below the guideline range if it determines that “the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the ‘heartland’ to which the Commission intends individual Guidelines to apply... perhaps because the Guidelines sentence itself fails to properly reflect §3553(a) considerations, or perhaps because the case warrants a different sentence regardless.” *Rita*, 127 S.Ct. at 2465

Further, “In each case, a criminal sentence must reflect an individualized assessment of a particular defendant’s culpability rather than a mechanistic application of a given sentence to a given category of crime”. *United States v. Baker*, et al., 771 F.2d 1362, 1365 (9<sup>th</sup> Cir.1985). A sentence below the advisory guidelines range is appropriate as long as the reasons for that sentence take into consideration the §3553(a) factors. This Court should not adopt a “mechanistic application” of the Guidelines but instead in determining a fair and reasonable sentence below the advisory guideline range should consider that the Guideline range overstates Mr. RIVERA’S involvement.

#### REQUEST FOR RECOMMENDATION OF DESIGNATION

The Defendant requests a recommendation of a designation to a facility as close to south Florida as possible.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on this 23rd day of October, 2023.

Respectfully submitted,

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By: /s/ Mark Alan LeVine  
Mark Alan LeVine, Esq